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FEDERAL COMMUNICATIONS COMMISSION
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September 4, 1998

BY COURIER

Magalie Roman Salas
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

Re: MM Docket No. 98-112, RM-9027, RM-9268: Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations. (Anniston and Ashland, Alabama, College Park, Covington and Milledgeville, Georgia)

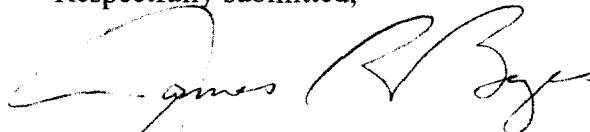
Dear Ms. Salas:

On August 31, 1998, this firm submitted Comments on behalf of Jefferson-Pilot Communications Company in opposition to the proposal of WNNX License Investment Co. in the above referenced proceeding. Inadvertently, a Table of Contents and a Summary, as required by Section 1.49(c) of the Commission's rules, were omitted.

Accordingly, I am enclosing herewith five replacement copies of the Comments as filed on August 31, including a cover page, Table of Contents and Summary. Please substitute the replacement copies for those originally submitted.

Should there be any questions concerning this matter, please contact the undersigned.

Respectfully submitted,


James R. Bayes

Enclosures

cc: Timothy E. Welch
Mark N. Lipp
John A. Karousos

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**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
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)	
Amendment of Section 73.202(b),)	MM Docket No. 98-112
Table of Allotments,)	RM-9027
FM Broadcast Stations.)	RM-9268
(Anniston and Ashland, Alabama,)	
College Park, Covington and Milledgeville,)	
Georgia))	

To: Chief, Allocations Branch

COMMENTS OF JEFFERSON-PILOT COMMUNICATIONS COMPANY

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Summary

After the failure of the eight year-attempt by its predecessor to reallocate WHMA(FM), Anniston, Alabama to Sandy Springs, Georgia, a suburb of Atlanta, Petitioner, WNNX License Investment Company, now seeks to reallocate WHMA to yet another suburb of Atlanta, College Park, Georgia. Petitioner alleges that the proposal would provide a first local transmission service to College Park under the Commission's third-ranking FM allotment priority and, thus, that the reallocation would be in the public interest. Because College Park is located within the Atlanta Urbanized Area, however, the Commission will scrutinize carefully the proposal to determine if the Petitioner in fact is seeking to provide service to the larger metropolis, Atlanta, at the expense of its original community of license, Anniston.

An evaluation of Petitioner's proposal under the standards established by the Commission demonstrates that College Park must be viewed as interdependent with Atlanta, and not as a free-standing, self-sufficient community. Consequently, College Park is not entitled to a first local service priority, and Petitioner's proposal must be evaluated under allotment priority four, "other public interest matters."

As Petitioner concedes, hundreds of thousands of listeners in the Anniston area would lose existing service as a result of the proposed reallocation. As the Commission previously concluded in rejecting the Sandy Springs proposal, the public's expectation of continued service outweighs any public service benefits of adding an allotment to the already well-served Atlanta Urbanized Area. Accordingly, the Commission should reject Petitioner's thinly-veiled attempt to add another service to the Atlanta Urbanized Area at the expense of its original community of license.

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Washington, D.C. 20554**

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Table of Allotments,)	RM-9027
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(Anniston and Ashland, Alabama,)	
College Park, Covington and Milledgeville,)	
Georgia))	

COMMENTS OF JEFFERSON-PILOT COMMUNICATIONS COMPANY

Jefferson-Pilot Communications Company, licensee of WQXI(AM), Atlanta, and WSTR(FM), Smyrna, Georgia, hereby submits these comments in opposition to the above-referenced petition of WNNX License Investment Co. ("Petitioner"), licensee of WHMA(FM), Anniston, Alabama ("WHMA"). Petitioner seeks the substitution of Channel 263C3 for Channel 263C and its reallocation from Anniston to College Park, Georgia, and the modification of WHMA's license to specify College Park as its community of license.¹ As shown herein, Petitioner proposes to move WHMA to a suburb of Atlanta, located within the Atlanta Urbanized Area and closely tied to the larger city, at the expense of WHMA's original community of license. Jefferson-Pilot submits that such a reallocation is not in the public interest and would undermine the Commission's mandate to ensure a fair, equitable and efficient distribution of radio service.

¹ See Notice of Proposed Rulemaking, DA 98-1330, released July 10, 1998.

I. Background

This rule making is the latest chapter in a saga that has lasted more than eight years. On February 12, 1990, Petitioner's predecessor in interest, Emerald Broadcasting of the South ("Emerald"), filed a proposal to relocate WHMA to Sandy Springs, Georgia, also a suburb of Atlanta (MM Docket No. 89-585). The Mass Media Bureau denied the Sandy Springs proposal in 1991, finding that Emerald had failed to demonstrate Sandy Springs' independence from the Atlanta Urbanized Area and, thus, that the proposal did not warrant a first local service priority. Eatonton and Sandy Springs, GA. and Anniston and Lineville, AL, 6 FCC Rcd 6580 (1991) ("Sandy Springs"). Consequently, the Bureau evaluated the proposal under the fourth-ranking factor under the agency's allotment priority policy—for "other public interest" matters—and determined that the proposed loss of service to approximately 410,000 persons would offset any possible public interest benefits of the reallocation. Id.

Emerald submitted an Application for Review in 1991 and, after that application was dismissed, filed another in 1997. With the 1997 Application for Review still pending, Petitioner filed the current petition for rule making to relocate WHMA to College Park ("Petition"). Although Petitioner touts the merits of the 1997 Application for Review, and claims that one of the benefits of granting the current Petition will be to finally put the other proceeding to rest, Petitioner filed a Request to Withdraw Application for Review that was granted on January 23, 1998. See Order, 13 FCC Rcd 2104 (1998).

The current Petition proposes a scheme substantially similar to the one that was rejected by the Commission in the Sandy Springs decision. As in that proceeding, the Commission here should find that the proposal is not entitled to a first local service preference and that, under the

Commission's public interest analysis, the current Class C allotment at Anniston, Alabama, should remain in place.

II. College Park Is Not Entitled to a First Local Service Priority.

Petitioner alleges that the proposed reallocation of WHMA would constitute a first local broadcast transmission service to College Park, Georgia, under the Commission's FM allotment priority policy. To protect against the migration of stations from underserved areas to well-served urban areas, however, the Commission has a long standing policy that it will not apply "blindly" the first local service preference when, as here, a petitioner seeks to reallocate an FM channel to a suburban community within the Urbanized Area of a larger central city.

Amendment of the Commission's Rules Regarding Modification of FM and TV Authorizations to Specify a New Community of License, 5 FCC Rcd 7094, 7096 (1990) ("Community Modifications II"). Rather, such a proposal will be scrutinized carefully to determine if the petitioner in fact seeks to provide service to the larger metropolis at the expense of the original community of license.

In Faye & Richard Tuck, 3 FCC Rcd 5374 (1988) ("Tuck"), the Commission developed three criteria to implement this policy: (1) signal population coverage (i.e., the degree to which the proposed station would serve not only the suburban community, but also the adjacent metropolis); (2) the relative size and proximity of the communities; and (3) the interdependence of the suburban community with the central city. Under these criteria, whenever a licensee proposes to relocate a station to a community within an Urbanized Area, the licensee must demonstrate that the proposed community of license is independent from the larger metropolitan area. The demonstration must be strong enough to overcome the inference of interdependence that the Commission draws from the presence of the community within the Urbanized Area. See

RKO General, Inc. (KERC), 5 FCC Rcd 3222, 3224 (1990) ("KERC"). Here, Petitioner has proposed to relocate WHMA to College Park, Georgia, which lies within the Atlanta Urbanized Area. See Exhibit A-1. Petitioner has failed, however, to show that it is deserving of a first local service preference under any of the three criteria.

The first criterion under Tuck, signal population coverage, does not support according College Park a first local service preference. Petitioner asserts that "the proposed 70 dBu contour will encompass only 44.3% of the Atlanta Urbanized Area. However, the 60 dBu contour of the proposed station will cover 85.7% of the Atlanta Urbanized Area."² See Exhibit B. Moreover, as indicated in the Notice of Proposed Rulemaking, the proposed reallocation of Channel 263 to College Park apparently will carry "a site restriction of 12.0 kilometers (7.5 miles) northwest, to accommodate petitioner's desired transmitter site." Such a site restriction would place the station's proposed transmitter even more deeply within the Atlanta Urbanized

² The Commission has made clear that it will measure both the 60 dBu contour and the 70 dBu contour to determine the extent of coverage in the Urbanized Area. See Clovis and Madera, CA, 11 FCC Rcd 5219, 5223 (1996); D'Iberville and Wiggins, MI, 10 FCC Rcd 10796, 10797 (1995).

Petitioner claims that the percentage of population covered by the 70 dBu contour "is favorable to the proposal because the Commission's standard is a 50% coverage before it requires a showing of independence." Petition at ¶15. The 50% standard, however, was implemented only to guard against situations in which a station seeks to move to a community just outside an Urbanized Area, but will nonetheless cover a substantial percentage of the Urbanized Area. In such cases, where the 70 dBu contour of the proposed station will cover more than 50% of the Urbanized Area, the petitioner has the burden to make the same showing required for parties seeking to move to a community within an Urbanized Area. See Headland, AL and Chattahoochee, FL, 10 FCC Rcd 10352, 10354 (1995); Ada, Newcastle and Watonga, OK, 11 FCC Rcd 16896, 16896-97 (1996). Here, College Park is located within the Atlanta Urbanized Area. Thus, the 70 dBu 50% figure is insufficient to relieve Petitioner of its burden.

Area, and possibly within the city limits of Atlanta itself. See Petition, Technical Exhibit, Figure 2.

The second criterion, relative size and proximity, also favors denying the Petitioner a first local service priority. College Park's population (20,457) is only 5.19% of the population of Atlanta (394,017), and a mere 0.95% of the population of the Atlanta Urbanized Area (2,157,806).³ U.S. Department of Commerce, Bureau of the Census, 1990 CPH-2-12 at 44, 46, 81. Further, College Park is located extremely close to Atlanta, only 10 minutes south of the downtown business district and within the perimeter of Atlanta's "beltway," Interstate 285. See Exhibit A-2. Both Atlanta and College Park are located in Fulton County, with a small portion of College Park also located in Clayton County. According to the South Fulton Chamber of Commerce (an affiliate of the Atlanta Chamber of Commerce), the close proximity and accessibility of downtown Atlanta is one of the key benefits of living in the area: "Its location is in the heart of 3.5 million people who live and work in the Atlanta metropolitan area." See Exhibit C-1.

Petitioner's predecessor in interest, Emerald, requested that the Commission reallocate WHMA to Sandy Springs, a community of more than 46,877 persons. Sandy Springs, 6 FCC Rcd 6580. Even though Sandy Springs has more than twice as many residents as College Park, the Commission found that Emerald had made an "extremely weak case" for independence. Id.

³ Petitioner suggests that the Commission looked favorably upon population percentages as low as 0.9% in Ada, Newcastle and Watonga, OK, 11 FCC Rcd 16896 (1996), 4.5% in Bay St. Louis and Poplarville, MS, 10 FCC Rcd 13144 (1995), 3.1% in Scotland Neck and Panteops, NC, 7 FCC Rcd 5113 (1992), and 3.7% in D'Iberville and Wiggins, MS, 10 FCC Rcd 10796 (1995). In fact, all of these decisions held that the relative size of the populations appeared to favor attribution of the communities to the Urbanized Area.

at 6584-85. Similarly, in KERC, the Commission found that the size of Richmond, California, and its proximity to San Francisco supported a finding that Richmond is interdependent with San Francisco. 5 FCC Rcd at 3223. Richmond, one-ninth the size of San Francisco, is located 16 miles away and is separated from the city by the San Francisco Bay. In this case, College Park is located just 7 miles from Atlanta (less than half the distance from Richmond to San Francisco) and is separated from downtown Atlanta by only the two small communities of East Point and Hapeville, not by any natural border such as a body of water. See Exhibit A-3. In addition, East Point and Hapeville are easily transgressed by local roads and by Metropolitan Atlanta Rapid Transit Authority (MARTA) trains, which offer quick and easy access from College Park to downtown Atlanta. Thus, the size and proximity of College Park to Atlanta strongly supports a determination of interdependence, not independence.

As Petitioner states, under the third criterion, the Commission weighs eight factors to determine if a community should be regarded as independent and, therefore, entitled to an allotment priority: (1) the extent to which community residents work in the larger metropolitan area, rather than the specified community; (2) whether the smaller community has its own newspaper or other media that cover the community's local needs and interests; (3) whether community leaders and residents perceive the specified community as being an integral part of, or separate from, the larger metropolitan area; (4) whether the specified community has its own local government and elected officials; (5) whether the smaller community has its own telephone book provided by the local telephone company or zip code; (6) whether the community has its own commercial establishments, health facilities, and transportation systems; (7) the extent to which the specified community and the central city are part of the same advertising market; and (8) the extent to which the specified community relies on the larger metropolitan area for various

municipal services such as police, fire protection, schools, and libraries. See Tuck, 3 FCC Rcd at 5378. Because consideration of these factors undeniably demonstrates that College Park and Atlanta are interdependent, Petitioner has failed to make the showing necessary to justify its claim to a first local service priority.

First, Petitioner grossly overstates its case by contending that “College Park is fully self-sufficient in providing work for its residents.” Petition at 9-10. In support, Petitioner lists several employers located in College Park, but fails to provide evidence concerning the extent to which College Park residents might work in College Park rather than the larger metropolitan area (factor 1).

By far the largest source of employment located in College Park is Hartsfield Atlanta International Airport. See Exhibit C-2. The fact that the Hartsfield Atlanta International Airport is located in College Park, however, certainly does not support a conclusion that College Park is a free-standing and self-sustaining community. Rather, it serves to emphasize the interdependence of College Park and the larger Atlanta metropolitan area. In the words of the Mayor of Atlanta, Bill Campbell, “Hartsfield Atlanta International Airport will play an important and active role as Atlanta solidifies its position as an international city. . . .” See Exhibit C-3.

The Federal Aviation Administration, another employer cited by Petitioner, of course, is associated with the airport. The Georgia International Convention Center, likewise, serves the entire Atlanta area, and not just College Park. The homepage of the Convention Center’s website touts its location as “next to Atlanta” and states, “If you are considering Atlanta as your next destination, the Georgia International Convention Center is a ‘close buy’.” See Exhibit C-4. Of the additional College Park-based employers listed by Petitioner, John Weiland Homes and Sysco Foods are the only companies with substantial numbers of employees. Coca Cola

maintains its international headquarters in Atlanta. Valujet, the location of which also was doubtless related to the Airport, is now operating as AirTran, and has its corporate headquarters in Orlando, Florida. See Exhibit C-2. Further, Petitioner's contention that a large number of workers (40%) commute to College Park from Atlanta and other nearby communities only strengthens the argument that College Park is no more than a mere appendage of Atlanta, rather than an independent city with its own workforce. See Petition at 9-10.

College Park does not have its own newspaper (factor 2), but shares a regional newspaper, The South Fulton Neighbor, with five other communities. See Exhibit C-5. The Atlanta Journal and Constitution, which covers events in College Park, is distributed throughout College Park. Within the exception of a recreation department newsletter, Petitioner does not assert that other types of media specifically serve College Park. See Petition at 10.

Petitioner's showing also is insufficient to demonstrate that community leaders and residents perceive College Park to be separate from Atlanta, and not an integral part of the larger metropolitan area (factor 3). Petitioner alleges that "a number of businesses identify so strongly with the City that they include the words 'College Park' in their name." Only 11 out of 802 licensed establishments, however, appear to bear the name "College Park." See Petition, Exhibit 1. Many of these establishments, moreover, appear to be small neighborhood businesses, such as College Park Appliance, College Park Beauty Mart, College Park Coin Laundry, College Park Flea Market and College Park Shoes. Id. In Sandy Springs, the Commission stated that the "mere fact" that some economic, political and cultural organizations identify themselves with the community fails to establish that the community is sufficiently independent from Atlanta.

In fact, given the intensity and diversity of human activity in urbanized areas, it is commonplace that organizations emerge that identify themselves with some geographic component of the urbanized area, such as a neighborhood,

subdivision, or political district. The test here is not whether such institutions exist, but what they indicate about the relationship between the suburb and the metropolis.

6 FCC Rcd at 6585.

With regard to municipal services (factor 8), College Park relies on Atlanta and Fulton County to provide wastewater treatment services, and College Park's water supply comes from East Point. See Exhibit C-6. The fact that College Park has its own elected officials (factor 4) and provides fire and police services is not sufficient to show independence from Atlanta. In that regard, in KERC, the Commission concluded that the community was interdependent with the major city, notwithstanding the existence of a separate local government and municipal services. 5 FCC Rcd at 3224.

As Petitioner concedes, College Park does not have its own telephone directory. In addition, College Park and Atlanta share the same area code (404). Nor does College Park have an exclusive zip code (factor 5). Rather, parts of Atlanta share the 30337 zip code with College Park. See Exhibit C-7. The Commission has found it significant that a community does not have its own telephone directory. See KERC, 5 FCC Rcd at 3224.

The great majority of College Park's commercial establishments appear to be strongly linked to Atlanta, and College Park is reliant upon Atlanta's public transportation system (factor 6). Contrary to the assertion of Petitioner, the Hartsfield Atlanta International Airport's location in College Park is not a sign of economic independence, but of interdependence. Most of the hotels and motels in the area service the airport. As stated above, out of 802 licensed businesses in College Park, a mere 11 entities use College Park in their name. Atlanta's public transportation system, MARTA, provides easy access to Atlanta for College Park residents.

Moreover, notwithstanding Petitioner's claim to the contrary (Petition at 13), Atlanta and College Park unquestionably are part of the same advertising market (factor 7). College Park is centrally located inside the Atlanta metro radio market. Investing in Radio Market Report '98; Radio Advertising Source (Mar. 1998). Furthermore, College Park falls inside the Atlanta Designated Market Area. See Exhibit A-4. It is also included in the Atlanta Metropolitan Statistical Area. See Exhibit A-5.

In short, the overwhelming weight of the evidence indicates that College Park should be regarded as a part of the larger Atlanta metropolitan community. Thus, Petitioner has failed to meet its burden to overcome the inference that College Park is interdependent with Atlanta, and cannot be accorded a preference for providing a first local service.

III. The Petition Is Not in the Public Interest

Because College Park and Atlanta are interdependent, Petitioner's proposal must be evaluated as a proposal to add another FM channel to Atlanta, which of course does not deserve a first local service preference. Instead, the proposal must be evaluated under allotment priority four, "other public interest matters." Jefferson-Pilot submits that the circumstances demonstrate that WHMA's current allocation better serves the public interest.

Indeed, the Commission has decided previously that the retention of service in Anniston serves the public interest over a reallocation to a community near Atlanta. In Sandy Springs, Emerald attempted to reallocate WHMA from Anniston, Alabama to Sandy Springs, Georgia, downgrade from Channel 263C to Channel 263C1, and allocate Channel 264A to Lineville, Alabama and 261C3 to Anniston. Emerald's scheme was similar to the plan proposed here: the reallocation of Channel 263C from Anniston to a location just outside of Atlanta, along with a reallocation of stations to cover some of the population loss incurred by the move from Anniston.

In Sandy Springs, the Commission held that, although “Emerald’s proposal might result in a superior arrangement of new allotments, there is, however, an important qualitative element of the proposal, the disruption to existing service, which counterbalances this consideration.” 6 FCC Rcd at 6586. The Commission continued: “The public has a legitimate expectation that existing service will continue, and this expectation is a factor we must weigh independently against the service benefits that may result from reallocating of a channel from one community to another” Id. (quoting Community Modifications II, 5 FCC Rcd at 7097). “The weight to be accorded the public’s expectation, moreover, is substantial.

Even assuming that service from the Lineville and Anniston Class C3 allotments would commence simultaneously or nearly simultaneously with the cessation of Class C operations from Anniston, approximately four hundred thousand individuals, over a widely spread geographic area, would lose service. These individuals would be precisely the type of person the Commission expressed concern about in Community Modifications II, since the net result of any action granting Emerald’s proposal would be that a substantial population, with a legitimate expectation of continued service, would suddenly find that they no longer have access to “the signal of an operating station that can be accessed today simply by turning on a . . . radio set.” 5 FCC Rcd at 7097. The approximately 400,000 individuals in question would not even be offered the “poor substitute” of a vacant allotment capable of providing service at some future date. This population is substantial, in both absolute numbers and relative to the proposed gains. Therefore, we conclude that the disruption to existing service that would be caused by grant of Emerald’s proposal substantially offsets the purported gains.

6 FCC Rcd at 6586-87.

Petitioner’s current proposal results in approximately 30,000 more listeners losing WHMA’s service than would have been lost with Emerald’s proposal (440,174 for College Park compared to approximately 410,000 for Sandy Springs). In addition, fewer people will gain service as a result of the current proposal than would have gained service with Emerald’s proposal (2,131,288 for College Park compared to approximately 2,200,000 for Sandy Springs),


resulting in a net gain for College Park of 1,691,114 compared to a net gain for Sandy Springs of approximately 1,790,000. In other words, the current proposal's benefits are less and its sacrifices are greater than the proposal rejected by the Commission in Sandy Springs as contrary to the public interest. Furthermore, as Petitioner concedes, 13.9% of the loss area will not retain at least five aural services. See Petition at 18. Consequently, the public interest would be better served by maintaining the current allotments.

IV. Conclusion

In sum, Petitioner has failed to show that College Park is sufficiently independent of the Atlanta Urbanized Area to warrant a first local service preference. Consequently, the Commission must evaluate its proposal under the lowest FM allotment priority, other public interest matters. Considered under that test, the proposed reallocation is not in the public interest.

Respectfully submitted,

JEFFERSON-PILOT COMMUNICATIONS
COMPANY

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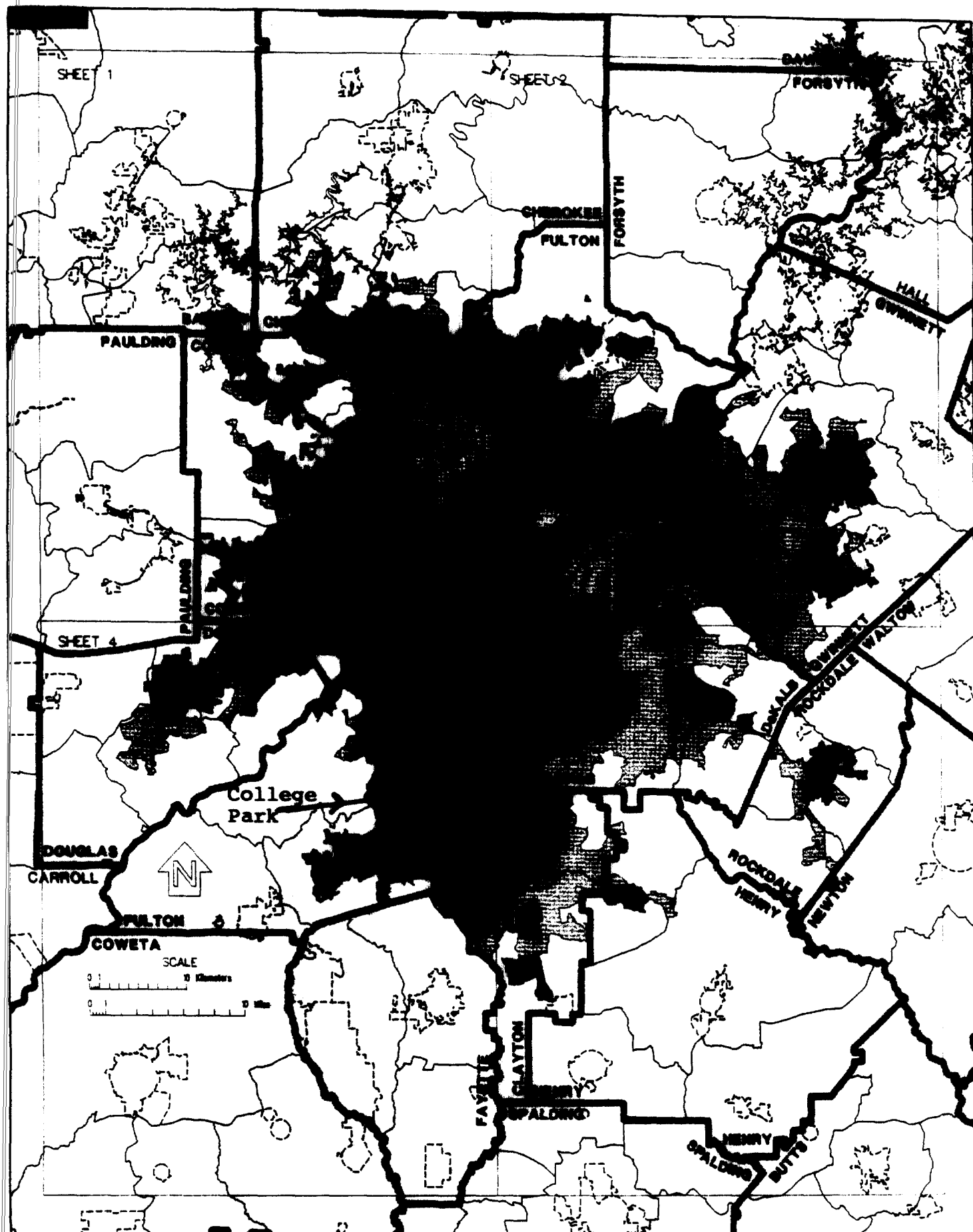
Its Attorneys

August 31, 1998

Exhibit A-1

**Maps depicting the Atlanta Urbanized Area
U.S. Department of Commerce, Bureau of the Census, 1990 CPH-2-
12, at G-13 & G-16**

Urbanized Areas



U.S. DEPARTMENT OF COMMERCE Economics and Statistics Administration Bureau of the Census

MAPS

GEORGIA G-13

Urbanized Areas

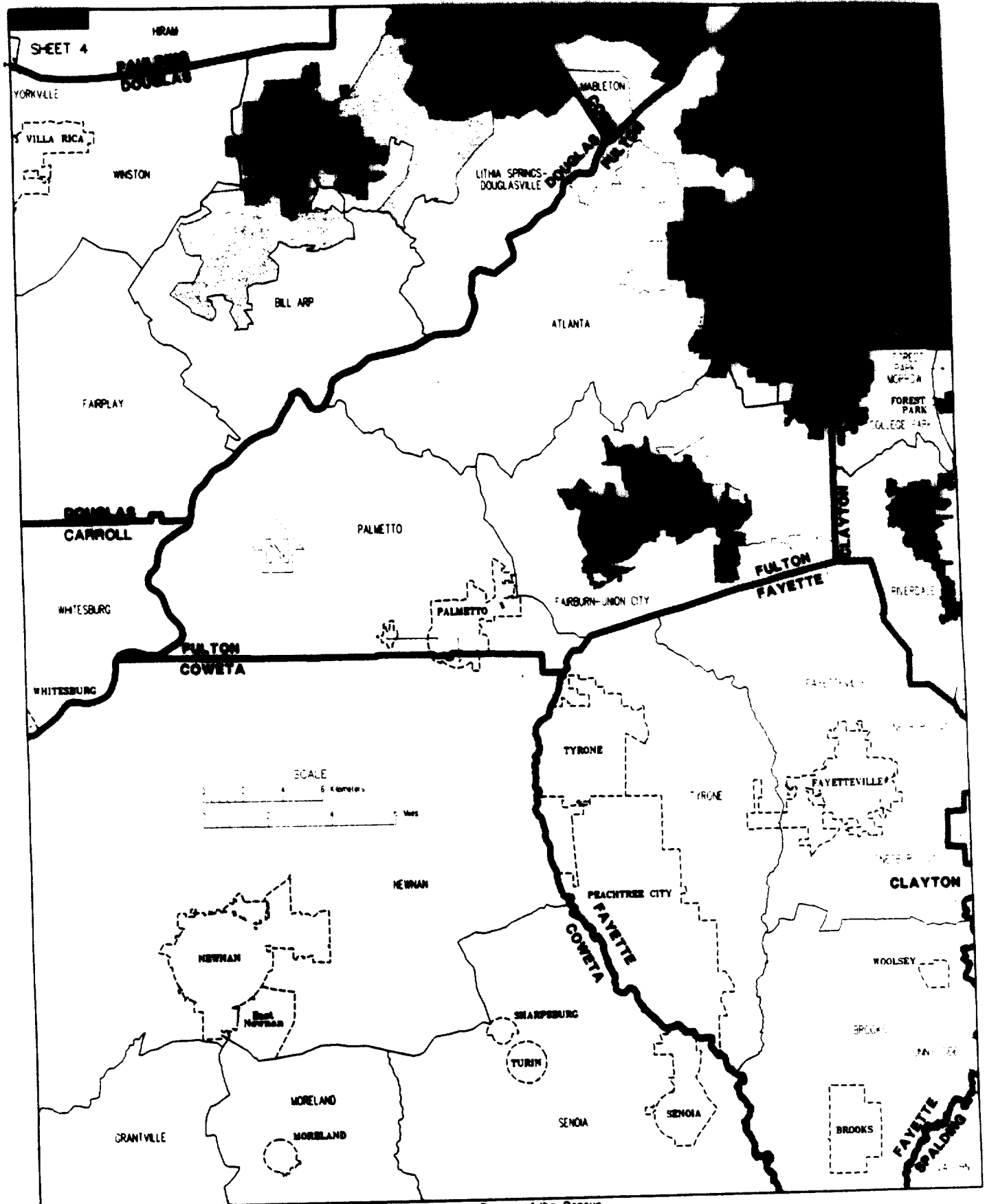


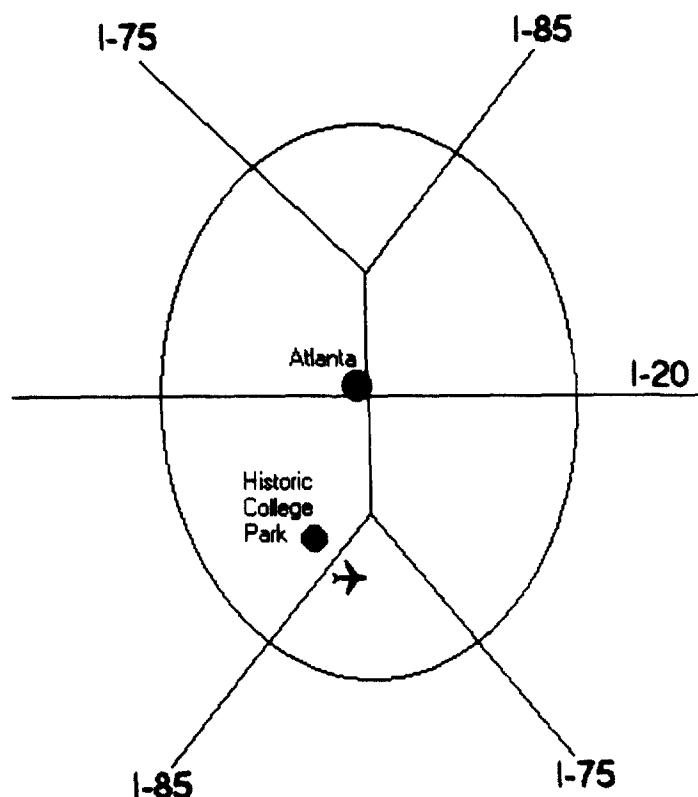
Exhibit A-2

**Map depicting College Park in relation to Atlanta,
<http://www.hcpna.org/location.htm>**

[HOME](#)[CITY
SERVICES](#)[LOCAL LINKS](#)[LOCATION](#)[ARCHITECTURE](#)[CALENDAR OF
EVENTS](#)[HISTORY](#)[ASSOCIATION
AND CONTACTS](#)

Location

Historic College Park is located only a few miles south of the Atlanta city limits within the perimeter of Interstate 285. Atlanta Hartsfield International Airport is located just south and east of the city. All major interstates in the Metro Atlanta area are easily accessible, with Interstate 85 less than a mile away. The local MARTA railway provides a quick way to the city or airport. A local MARTA station with plenty of parking make this a popular, inexpensive method of transportation.

[Home](#)

[City Services](#) | [Links](#) | [Location](#) | [Architecture and Photos](#) | [Calendar of Events](#)
[History](#) | [Neighborhood Association and Contacts](#)

Exhibit A-3

Map of Atlanta Area, 1995 Rand McNally Road Atlas at 26

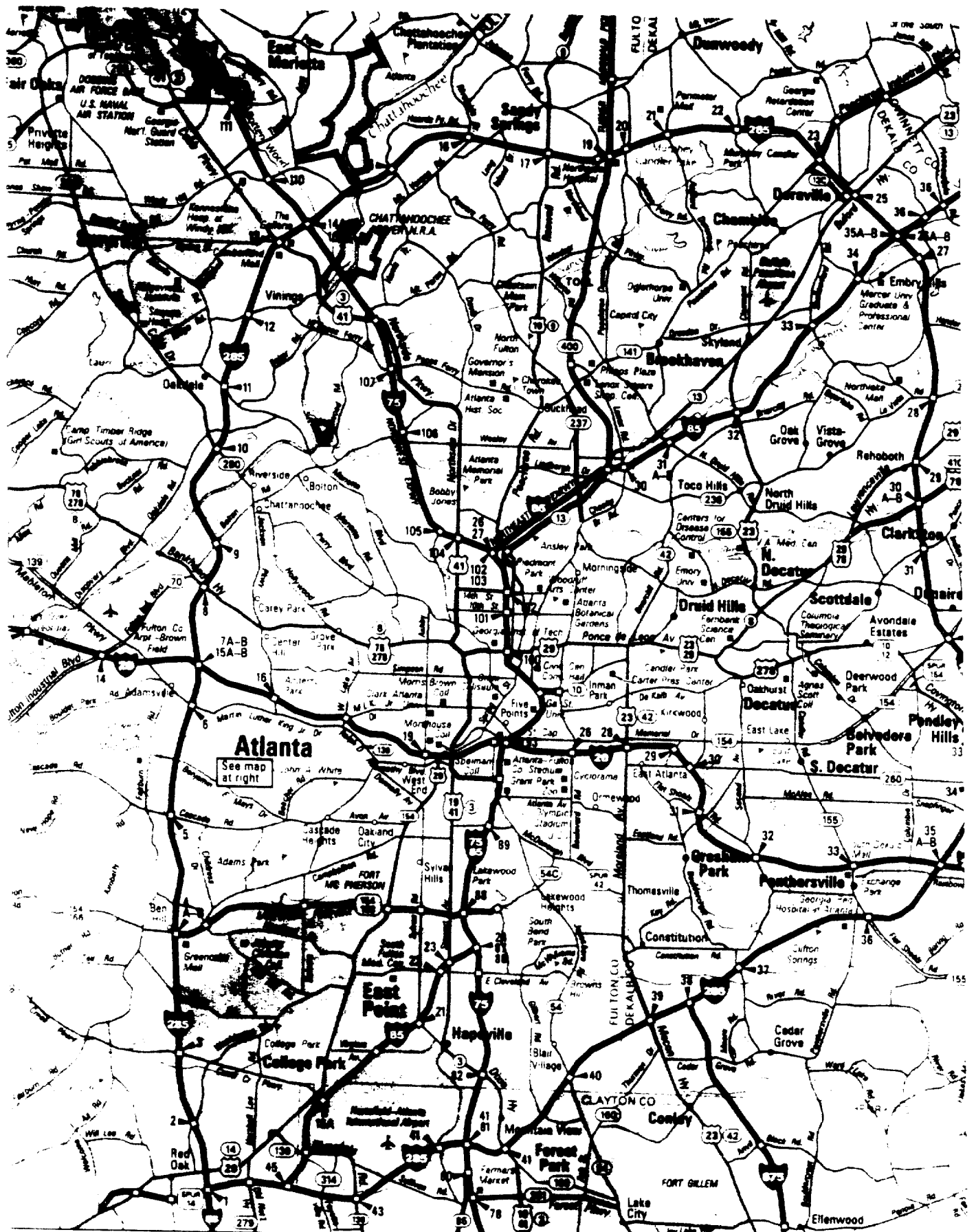


Exhibit A-4

**Map of Atlanta Designated Market Area
Broadcasting & Cable Yearbook 1998, R.R. Bowker Publication**

